IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5224 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GAUTAMBHAI HIRJI GARI (GADERIYA)

Versus

COMMISSIONER OF POLICE AHMEDEABAD

Appearance:

1. Special Civil Application No. 5224 of 2004

HL PATEL ADVOCATES for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/09/2004

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 23-3-2004 passed by the Police Commissioner, Ahmedabad City, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and the learned AGP for the State. Also perused the record. Learned advocate for the petitioner has submitted that a solitary offence has been registered against the detenu being Naroda Police Station Prohibition C.R.No.5072 of 2004 dated 18-3-2004. He has concentrated his arguments only on the point of the detenu being in judicial custody at the time of passing the detention order. Drawing my attention towards page 12 of the compilation, it was contented that when the order of detention was passed, the detenu was in judicial custody, which aspect ought to have been considered by the authority while passing the detention order. He has submitted that the co-detenu were released by this Court vide order dated 8-9-2004 passed in Special Civil Application Nos.5220 and 5221 of 2004 and hence, it is requested that the petitioner may also be released. He has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

> "Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

4. It seems that there is non-application of mind on the part of detaining authority as detenu was in judicial custody when the impugned order of detention was passed and hence, in view of the judgment rendered in Amritlal (supra), the continued detention of the detenu is illegal and the same cannot be sustained. Since the petitioner succeeds only on this ground, he does not press any other

grounds. It is to be noted that co-detenu were released by this Court in Special Civil Application Nos.5220 and 5221 of 2004 vide order dated 8-9-2004, present petitioner is also entitled to be released.

5. The petition is allowed. The impugned order of detention dated 23-3-2004 passed against the detenu Gautambhai Hirji Gari (Gaderiya) is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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